

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

THE STATE OF OHIO, ex rel. DAVE YOST,  
OHIO ATTORNEY GENERAL,

and

THE UNITED STATES OF AMERICA,

Plaintiffs,

v.

NORFOLK SOUTHERN CORPORATION and  
NORFOLK SOUTHERN RAILWAY COMPANY,

Defendants.

Civil Action No. 4:23CV517

4:23CV675

Hon. John R. Adams

**NORFOLK SOUTHERN'S STATUS REPORT**

Pursuant to this Court's April 15, 2024 Case Management Plan (Dkt. 131), Defendants Norfolk Southern Corporation and Norfolk Southern Railway Company ("Norfolk Southern") submit the following status report for the period from December 13, 2024, to January 13, 2025 ("the reporting period").

1. Discovery that has occurred during the reporting period:
  - a. The United States and Norfolk Southern jointly moved for a formal stay of discovery on June 14, 2024. Dkt. 143.
  - b. Norfolk Southern and the State of Ohio have had multiple meet and confer discussions to organize and coordinate document productions, discovery responses, and depositions.
  - c. Norfolk Southern and the State of Ohio have completed document productions.

- d. Norfolk Southern and the State of Ohio have completed party depositions. Norfolk Southern held open two depositions of Ohio Environmental Protection Agency witnesses due to deficiencies in the State of Ohio's interrogatory responses: (1) Kurt Kollar and (2) Melissa Witherspoon. Norfolk Southern also held open two depositions of Ohio Environmental Protection Agency witnesses due to the late production of documents: (1) Kurt Kollar and (2) Michael Eberle.
  - e. The State of Ohio has said it cannot respond to discovery requests on behalf of any Ohio state agency other than the Ohio Environmental Protection Agency because other Ohio agencies are not parties to this litigation. Accordingly, Norfolk Southern served document subpoenas and deposition notices on the Ohio Emergency Management Agency, Ohio Department of Health, Ohio Department of Natural Resources, Ohio River Valley Water Sanitation Commission, and Ohio Department of Agriculture. Document productions from the Ohio Emergency Management Agency, Ohio Department of Health, Ohio Department of Natural Resources, and Ohio Department of Agriculture are ongoing. Norfolk Southern took depositions of the Ohio Department of Health on January 8, 2025 (held open because document production is ongoing), the Ohio Department of Agriculture on January 9, 2025, and the Ohio Emergency Management Agency on January 10, 2025 (held open because document production is ongoing).
2. Settlement discussions that have occurred during the reporting period:
- a. The State of Ohio and Norfolk Southern have engaged in settlement discussions and Norfolk Southern has made a proposal to the State. Discussions are ongoing.

b. On May 23, 2024, the United States filed a Notice of Lodging of Proposed Consent Decree, Dkt. 138, documenting the proposed settlement between the United States and Norfolk Southern. The Consent Decree was published in the Federal Register on May 30, 2024, commencing a 30-day public comment period. On June 6, 2024, the State of Ohio filed a Notice of Request for Extension of Comment Period, Dkt. 140, informing the Court that it had asked the United States to extend the public comment period for another 30 days to August 1, 2024. The United States agreed and extended the comment period to August 2, 2024. Dkt. 142. On October 10, 2024, the United States lodged all comments with the Court. *See* Dkt. 162.

3. Motions that have been filed or remain pending during the reporting period:

- a. On March 26, 2024, Norfolk Southern filed a motion for entry of partial final judgment under Federal Rule of Civil Procedure 54(b) with respect to the dismissed claims brought in Norfolk Southern's Third-Party Complaint. Dkt. 121. Third-Party Defendant Trinity Industries Leasing Company, which was dismissed from this action pursuant to this Court's March 6, 2024 Order, Dkt. 113, filed an opposition to Norfolk Southern's motion for entry of partial final judgment on April 9, 2024, Dkt. 123. Norfolk Southern filed a reply in support of its motion on April 16, 2024. Dkt. 132. Norfolk Southern's motion is fully briefed and remains pending.
- b. On June 14, 2024, the United States and Norfolk Southern jointly filed a motion to stay discovery in light of their pending settlement. Dkt. 143. This motion is fully briefed and remains pending.
- c. On October 10, 2024, the United States filed a Motion to Enter Consent Decree. Dkt. 162.

4. Developments that might give rise to a request to deviate from the case management plan schedule: Incomplete document productions from the Ohio Department of Natural Resources, the Ohio Department of Health, the Ohio Department of Agriculture, and the Ohio Emergency Management Agency may require a short extension of the close of fact discovery for the limited purposes of discovery directed towards these four agencies.

Norfolk Southern will submit its next status report on February 12, 2025.

Date: January 13, 2025

Respectfully submitted,

/s/ Davina Pujari

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on January 13, 2025, I served a copy of the foregoing document by filing through the Court's CM/ECF system, which electronically notified all parties of record.

/s/ Davina Pujari  
Davina Pujari (admitted *pro hac vice*)  
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